

1 EDWIN V. WOODSOME, JR. (State Bar No. 56305)
ewoodsome@orrick.com
2 ANDREW S. WONG (State Bar No. 198227)
aswong@orrick.com
3 SETH E. FREILICH (State Bar No. 217321)
sfreilich@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
777 South Figueroa Street, Suite 3200
5 Los Angeles, California 90017-5855
Telephone: (213) 629-2020
6 Facsimile: (213) 612-2499

7 Attorneys for Defendant TIMOTHY T. SIDLEY

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 NATIONAL CREDIT UNION
14 ADMINISTRATION BOARD AS
15 CONSERVATOR FOR WESTERN
CORPORATE FEDERAL CREDIT
UNION,

16 Plaintiff,

17 v.

18 ROBERT A. SIRAVO, et al.,
19 Defendants.
20

Case No. CV10-01597 GW (MANx)

**DEFENDANT TIMOTHY T.
SIDLEY'S ANSWER TO FIRST
AMENDED COMPLAINT FOR
DAMAGES FOR BREACH OF
FIDUCIARY DUTIES, GROSS
NEGLIGENCE, FRAUD AND
UNJUST ENRICHMENT**

Hon. George Wu

1 Defendant Timothy T. Sidley (“Mr. Sidley”) hereby responds to the
2 allegations of the First Amended Complaint (the “Complaint”) of plaintiff, the
3 National Credit Union Administration Board as Conservator of Western Corporate
4 Federal Credit Union (the “Conservator”), as follows:

5 **JURISDICTION AND VENUE**

6 1. Mr. Sidley admits, on information and belief, that Western Corporate
7 Federal Credit Union (“WesCorp”) is a credit union with its corporate offices
8 located in San Dimas, California. Mr. Sidley admits, on information and belief,
9 that WesCorp was placed into conservatorship by the National Credit Union
10 Administration Board in or around March 2009. Mr. Sidley lacks knowledge or
11 information sufficient to form a belief as to the truth of the remaining allegations of
12 paragraph 1 of the Complaint.

13 2. Paragraph 2 contains legal conclusions, to which no response is
14 required. To the extent the allegations require a response, they are denied.

15 3. Paragraph 3 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response, they are denied.

17 4. Paragraph 4 contains legal conclusions, to which no response is
18 required. To the extent the allegations require a response, they are denied.

19 **PARTIES**

20 5. Mr. Sidley admits, on information and belief, that the National Credit
21 Union Administration Board is the conservator for WesCorp.

22 6. Mr. Sidley admits, on information and belief, that Robert A. Siravo
23 (“Mr. Siravo”) served as President and CEO of WesCorp. Mr. Sidley lacks
24 knowledge or information sufficient to form a belief as to the dates Mr. Siravo
25 served in these capacities. Mr. Sidley lacks knowledge or information sufficient to
26 form a belief as to the truth of the remaining allegations of paragraph 6 of the
27 Complaint.

28 7. Mr. Sidley admits, on information and belief, that Todd M. Lane (“Mr.

1 Lane”) served as Chief Financial Officer of WesCorp. Mr. Sidley lacks knowledge
2 or information sufficient to form a belief as to the dates Mr. Lane served in this
3 capacity. Mr. Sidley lacks knowledge or information sufficient to form a belief as
4 to the truth of the remaining allegations of paragraph 7 of the Complaint

5 8. Mr. Sidley admits, on information and belief, that Robert J. Burrell
6 (“Mr. Burrell”) served as an Executive Vice President and as the Chief Investment
7 Officer for WesCorp. Mr. Sidley lacks knowledge or information sufficient to form
8 a belief as to the dates Mr. Burrell served in these capacities. Mr. Sidley lacks
9 knowledge or information sufficient to form a belief as to the truth of the remaining
10 allegations of paragraph 8 of the Complaint.

11 9. Mr. Sidley admits that he served as Vice President for Risk
12 Assessment for WesCorp starting on or about June 18, 1998 but denies that he
13 served as the Vice President for Risk Assessment for WesCorp through April 2,
14 2010. Mr. Sidley admits that he also served as the Chief Risk Officer of WesCorp
15 but denies that he served as Chief Risk Officer of WesCorp beginning June 18,
16 1998 – Mr. Sidley did not begin serving as Chief Risk Officer of WesCorp until
17 October 3, 2006. On or about July 9, 2009, Mr. Sidley ceased serving as the Vice
18 President for Risk Assessment and as the Chief Risk Officer, and began serving as
19 the Vice President of Strategic Projects until he retired from WesCorp on April 2,
20 2010. Mr. Sidley admits that he currently resides in California. The remaining
21 allegations of paragraph 9 of the Complaint contain legal conclusions, to which no
22 response is required. To the extent the allegations require a response, they are
23 denied.

24 10. Mr. Sidley lacks knowledge or information sufficient to form a belief
25 as to the truth of the allegations of paragraph 10 of the Complaint.

26 11. Mr. Sidley lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations of paragraph 11 of the Complaint.

28 12. Mr. Sidley lacks knowledge or information sufficient to form a belief

1 as to the truth of the allegations of paragraph 12 of the Complaint.

2 13. Mr. Sidley lacks knowledge or information sufficient to form a belief
3 as to the truth of the allegations of paragraph 13 of the Complaint.

4 14. Mr. Sidley lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations of paragraph 14 of the Complaint.

6 15. Mr. Sidley lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations of paragraph 15 of the Complaint.

8 16. Mr. Sidley lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations of paragraph 16 of the Complaint.

10 17. Mr. Sidley lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations of paragraph 17 of the Complaint.

12 18. Mr. Sidley lacks knowledge or information sufficient to form a belief
13 as to the truth of the allegations of paragraph 18 of the Complaint.

14 19. Mr. Sidley lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations of paragraph 19 of the Complaint.

16 20. Mr. Sidley lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations of paragraph 20 of the Complaint.

18 21. Mr. Sidley lacks knowledge or information sufficient to form a belief
19 as to the truth of the allegations of paragraph 21 of the Complaint.

20 22. Mr. Sidley denies the allegations of paragraph 22 of the Complaint.

21 23. Mr. Sidley denies the allegations of paragraph 23 of the Complaint.

22 **SUMMARY OF CLAIMS**

23 24. Mr. Sidley admits, on information and belief, that WesCorp is a non-
24 profit corporate credit union run for the benefit of its members, who are themselves
25 credit union. Mr. Sidley admits, on information and belief, that WesCorp provides
26 its members with banking and investment services. The remaining allegations of
27 paragraph 24 of the Complaint contain legal conclusions, to which no response is
28 required. To the extent the allegations require a response, they are denied.

1 25. Mr. Sidley admits, on information and belief, that WesCorp is a
2 corporate federal credit union and provides its members with banking and
3 investment services. Mr. Sidley admits, on information and belief, that Mr. Siravo
4 served as President and CEO of WesCorp. Mr. Sidley lacks knowledge or
5 information sufficient to form a belief as to the dates Mr. Siravo served in those
6 capacities. Mr. Sidley lacks knowledge or information sufficient to form a belief as
7 to the truth of the remaining allegations of paragraph 25 of the Complaint, and on
8 that basis denies them.

9 26. Mr. Sidley admits that WesCorp invested in securities, including
10 private label mortgage backed securities ("MBS"). Mr. Sidley lacks knowledge or
11 information sufficient to form a belief as to the remaining allegations of paragraph
12 26 of the Complaint.

13 27. Mr. Sidley lacks knowledge or information sufficient to form a belief
14 as to the truth of the allegations of paragraph 27 of the Complaint, and on that basis
15 denies them.

16 28. Mr. Sidley lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations of paragraph 28 of the Complaint, and on that basis
18 denies them.

19 29. Mr. Sidley lacks knowledge or information sufficient to form a belief
20 as to the truth of the allegations of paragraph 29 of the Complaint, and on that basis
21 denies them.

22 30. Mr. Sidley admits that WesCorp invested in MBS, including MBS
23 based on Option ARM loans. Mr. Sidley lacks knowledge or information sufficient
24 to form a belief as to the truth of the remaining allegations of paragraph 30 of the
25 Complaint, and on that basis denies them.

26 31. Mr. Sidley admits that WesCorp invested in MBS, including MBS
27 based on Option ARM loans. Mr. Sidley lacks knowledge or information sufficient
28 to form a belief as to the dollar value of MBS or Option ARM MBS in WesCorp's

1 2007 investment portfolio. Mr. Sidney denies the remaining allegations of
2 paragraph 31 of the Complaint.

3 32. Mr. Sidney admits, on information and belief, that the MBS loans that
4 WesCorp purchased for investment were rated AAA or at least AA by Moody's and
5 S&P, or both, and underwritten by leading investment banks. Mr. Sidney denies the
6 remaining allegations of paragraph 32 of the Complaint.

7 33. Mr. Sidney lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations regarding WesCorp's 2009 recorded losses, and on
9 that basis denies them, except to the extent they reference the contents of
10 WesCorp's 2009 financial statements, which speak for themselves. Mr. Sidney
11 refers to WesCorp's 2009 financial statements for their contents and denies any
12 characterization inconsistent with their terms. Mr. Sidney denies the remaining
13 allegations of paragraph 33 of the Complaint.

14 34. Mr. Sidney lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations of paragraph 34 of the Complaint.

16 35. Mr. Sidney lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations of paragraph 35 specifically identifying Messrs.
18 Siravo, Swedberg and Lane. Mr. Sidney denies the remaining allegations of
19 paragraph 35 of the Complaint.

20 **FACTUAL ALLEGATIONS**

21 **The Federal Credit Union System**

22 36. Mr. Sidney admits, on information and belief, that the federal credit
23 union system is a three-tier system consisting of (1) one wholesale corporate credit
24 union (U.S. Central Federal Credit Union); (2) retail corporate credit unions; and
25 (3) "natural person" credit unions. Mr. Sidney further admits that the wholesale
26 corporate credit union, "U.S. Central," provides services to the retail corporate
27 credit unions, while the retail corporate credit unions provide services to both
28 federally-chartered and state-chartered natural person credit unions. Mr. Sidney

1 lacks knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations of paragraph 36 of the Complaint.

3 37. Mr. Sidley admits, on information and belief, that WesCorp was a
4 corporate credit union. Mr. Sidley lacks knowledge or information sufficient to
5 form a belief as to the truth of the remaining allegations of paragraph 37 of the
6 Complaint.

7 38. Mr. Sidley admits, on information and belief, that corporate credit
8 unions are owned by their members and that in the case of the retail corporate credit
9 union, the members are primarily natural person credit unions.

10 39. Mr. Sidley admits, on information and belief, that retail corporate
11 credit unions provide services and support to their natural person credit union
12 members. Mr. Sidley admits, on information and belief, that retail corporate credit
13 unions offer their natural person credit unions banking and investment products and
14 services, and that these products and services may include settlement of
15 transactions such as checks, ATM and credit card transactions and wire transfers.
16 Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth
17 of the remaining allegations of paragraph 39 of the Complaint.

18 40. Mr. Sidley admits, on information and belief, that corporate credit
19 unions are non-profit organizations. Mr. Sidley lacks knowledge or information
20 sufficient to form a belief as to the truth of the allegations regarding alleged
21 statements from WesCorp's website, and on that basis denies them, except to the
22 extent they reference the contents of WesCorp's website, which speaks for itself.
23 Mr. Sidley refers to WesCorp's website for its contents and denies any
24 characterization inconsistent with its terms. Mr. Sidley lacks knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations of
26 paragraph 40 of the Complaint.

27 41. Mr. Sidley lacks knowledge or information sufficient to form a belief
28 as to the truth of the allegations regarding alleged statements from WesCorp's

1 bylaws, and on that basis denies them, except to the extent they reference the
2 contents of WesCorp's bylaws, which speak for themselves. Mr. Sidley refers to
3 WesCorp's bylaws for their contents and denies any characterization inconsistent
4 with their terms. Mr. Sidley lacks knowledge or information sufficient to form a
5 belief as to the truth of the remaining allegations of paragraph 41 of the Complaint.

6 42. Mr. Sidley admits, on information and belief, that corporate credit
7 unions pool the assets of their natural person credit union members and provide
8 banking and investment services to its members. The remaining allegations of
9 paragraph 42 of the Complaint contain legal conclusions, to which no response is
10 required. To the extent the allegations require a response, they are denied.

11 43. Mr. Sidley admits, on information and belief, that most credit unions
12 in California became members of WesCorp. Mr. Sidley admits, on information and
13 belief, that WesCorp provided services to its credit union members. Mr. Sidley
14 lacks knowledge or information sufficient to form a belief as to the truth of the
15 remaining allegations of paragraph 43 of the Complaint.

16 **WesCorp's Era of Growth**

17 44. Mr. Sidley lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations of paragraph 44 of the Complaint, and on that basis
19 denies them.

20 45. Mr. Sidley admits, based on information and belief, that Mr. Siravo
21 served as President and CEO of WesCorp. Mr. Sidley lacks knowledge or
22 information sufficient to form a belief as to the remaining allegations of paragraph
23 45 of the Complaint, and on that basis denies them.

24 46. Mr. Sidley lacks knowledge or information sufficient to form a belief
25 as to the truth of the allegations of paragraph 46 of the Complaint, and on that basis
26 denies them.

27 47. Mr. Sidley lacks knowledge or information sufficient to form a belief
28 as to the truth of the allegations of paragraph 47 of the Complaint, and on that basis

1 denies them.

2 48. Mr. Sidley lacks knowledge or information sufficient to form a belief
3 as to the truth of the allegations of paragraph 48 of the Complaint, and on that basis
4 denies them.

5 49. Mr. Sidley lacks knowledge or information sufficient to form a belief
6 as to the truth of the allegations of paragraph 49 of the Complaint, and on that basis
7 denies them.

8 50. Mr. Sidley admits that for a period time, private label MBS were
9 typically higher-yielding than MBS issued by government agencies. Mr. Sidley
10 lacks knowledge or information sufficient to form a belief as to the truth of the
11 remaining allegations of paragraph 50 of the Complaint, and on that basis denies
12 them.

13 51. Mr. Sidley lacks knowledge or information sufficient to form a belief
14 as to the truth of the allegations of paragraph 51 of the Complaint, and on that basis
15 denies them.

16 52. Mr. Sidley lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations of paragraph 52 of the Complaint, and on that basis
18 denies them.

19 53. Mr. Sidley lacks knowledge or information sufficient to form a belief
20 as to the truth of the allegations of paragraph 53 of the Complaint, and on that basis
21 denies them.

22 **WesCorp's Increasing Concentration of Private Label MBS Investments**

23 54. Mr. Sidley lacks knowledge or information sufficient to form a belief
24 as to the truth of the allegations of paragraph 54 of the Complaint, and on that basis
25 denies them.

26 55. Mr. Sidley denies the allegations of the first sentence of paragraph 55
27 of the Complaint. Mr. Sidley lacks knowledge or information sufficient to form a
28 belief as to the truth of the remaining allegations of paragraph 55 of the Complaint,

1 and on that basis denies them.

2 56. Mr. Sidney admits, on information and belief, that WesCorp invested in
3 MBS, including Collateralized Debt Obligations (“CDOs”) and Option ARM MBS.
4 Mr. Sidney lacks knowledge or information sufficient to form a belief as to the truth
5 of the remaining allegations of paragraph 56 of the Complaint, and on that basis
6 denies them.

7 57. Mr. Sidney admits, on information and belief, that CDOs are shares in
8 a pool of MBS. The remaining allegations of paragraph 57 contains legal
9 conclusions, to which no response is required. To the extent the allegations require
10 a response, they are denied.

11 58. Mr. Sidney admits, on information and belief, that WesCorp purchased
12 CDOs. Mr. Sidney lacks knowledge or information sufficient to form a belief as to
13 the truth of the remaining allegations of paragraph 58 of the Complaint, and on that
14 basis denies them.

15 59. Mr. Sidney admits, on information and belief, that Option ARM MBS
16 are shares in pools of Option ARM mortgages. Mr. Sidney admits, on information
17 and belief, that in some instances Option ARM MBS monthly payments “reset.”
18 Mr. Sidney lacks knowledge or information sufficient to form a belief as to the
19 remaining allegations of paragraph 59 of the Complaint, and on that basis denies
20 them.

21 60. Mr. Sidney admits, on information and belief, that WesCorp invested in
22 Option ARM MBS. Mr. Sidney lacks knowledge or information sufficient to form a
23 belief as to the truth of the remaining allegations of paragraph 60 of the Complaint,
24 and on that basis denies them.

25 61. Mr. Sidney admits that WesCorp purchased certain MBS from lower
26 tranches and that cash flows are paid to higher tranches before they are paid to
27 lower tranches. Mr. Sidney further admits that this means that the lower tranches
28 generally have a higher risk and, therefore, pay a higher yield. Mr. Sidney further

1 admits that WesCorp's purchase of MBS from lower tranches generally increased
2 the yield and risk in its investment portfolio. Mr. Sidley lacks knowledge or
3 information sufficient to form a belief as to the truth of the remaining allegations of
4 paragraph 61 of the Complaint, and on that basis denies them.

5 62. Mr. Sidley lacks knowledge or information sufficient to form a belief
6 as to the truth of the allegations of paragraph 62 of the Complaint, and on that basis
7 denies them.

8 63. Mr. Sidley lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations of paragraph 63 of the Complaint, and on that basis
10 denies them.

11 64. Mr. Sidley lacks knowledge or information sufficient to form a belief
12 as to the truth of the allegations of paragraph 64 of the Complaint, and on that basis
13 denies them.

14 **WesCorp's Failure to Control MBS Concentration Risk**

15 65. Mr. Sidley lacks knowledge or information sufficient to form a belief
16 as to the truth of the allegations regarding the content of specific WesCorp budgets
17 or the executive summary narrative for the budgets, documents which speak for
18 themselves. Mr. Sidley refers to the WesCorp budgets and the executive summary
19 narrative for the budgets and denies any characterization inconsistent with their
20 terms. Mr. Sidley denies the remaining allegations of paragraph 33 of the
21 Complaint.

22 66. Mr. Sidley lacks knowledge or information sufficient to form a belief
23 as to the truth of the remaining allegations of paragraph 66 of the Complaint, and
24 on that basis denies them.

25 67. Mr. Sidley admits, on information and belief, that Burrell and
26 WesCorp's Investment Department were responsible for ensuring that WesCorp's
27 investments earned the returns required to meet WesCorp's budget for investment
28 income and net interest income.

1 68. Mr. Sidley denies the allegations of paragraph 68 of the Complaint.
2 Mr. Sidley headed the Risk Assessment Department at WesCorp. WesCorp's Risk
3 Assessment Department was not responsible for proposing concentration limits for
4 WesCorp's investment portfolio.

5 69. Mr. Sidley lacks knowledge or information sufficient to form a belief
6 as to the truth of the remaining allegations of paragraph 69 of the Complaint, and
7 on that basis denies them.

8 70. Mr. Sidley denies the allegations of paragraph 70 of the Complaint.
9 Mr. Sidley specifically denies any allegation of paragraph 70 of the Complaint that
10 he was in charge of proposing or adopting concentration limits for Option ARM
11 MBS in WesCorp's portfolio.

12 71. Mr. Sidley denies the allegations of paragraph 71 of the Complaint.
13 Mr. Sidley specifically denies any allegation of paragraph 71 of the Complaint that
14 he was in charge of proposing or adopting concentration limits for Option ARM
15 MBS in WesCorp's portfolio.

16 72. Mr. Sidley lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations of paragraph 72 of the Complaint, and on that basis
18 denies them.

19 73. Mr. Sidley denies the allegations of paragraph 73 of the Complaint.
20 Mr. Sidley specifically denies any allegation of paragraph 73 of the Complaint that
21 he was in charge of proposing or adopting concentration limits for MBS in
22 WesCorp's portfolio.

23 **The Warnings of Risks in WesCorp's Portfolio**

24 74. Mr. Sidley admits, on information and belief, the allegations of
25 paragraph 74 of the Complaint.

26 75. Mr. Sidley lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations of paragraph 75 of the Complaint, and on that basis
28 denies them.

1 as to the truth of the allegations of paragraph 84 of the Complaint, and on that basis
2 denies them.

3 85. Mr. Sidley lacks knowledge or information sufficient to form a belief
4 as to the truth of the allegations of paragraph 85 of the Complaint, and on that basis
5 denies them.

6 86. Mr. Sidley lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations of paragraph 86 of the Complaint, and on that basis
8 denies them.

9 87. Mr. Sidley lacks knowledge or information sufficient to form a belief
10 as to the truth of the allegations of paragraph 87 of the Complaint, and on that basis
11 denies them.

12 88. Mr. Sidley lacks knowledge or information sufficient to form a belief
13 as to the truth of the allegations of paragraph 88 of the Complaint, and on that basis
14 denies them.

15 89. Mr. Sidley lacks knowledge or information sufficient to form a belief
16 as to the truth of the allegations of paragraph 89 of the Complaint, and on that basis
17 denies them.

18 90. Mr. Sidley lacks knowledge or information sufficient to form a belief
19 as to the truth of the allegations of paragraph 90 of the Complaint, and on that basis
20 denies them.

21 91. Mr. Sidley lacks knowledge or information sufficient to form a belief
22 as to the truth of the allegations of paragraph 91 of the Complaint, and on that basis
23 denies them.

24 92. Mr. Sidley lacks knowledge or information sufficient to form a belief
25 as to the truth of the allegations of paragraph 92 of the Complaint, and on that basis
26 denies them.

27 93. Mr. Sidley lacks knowledge or information sufficient to form a belief
28 as to the truth of the allegations of paragraph 93 of the Complaint, and on that basis

1 denies them.

2 94. Mr. Sidley lacks knowledge or information sufficient to form a belief
3 as to the truth of the allegations of paragraph 94 of the Complaint, and on that basis
4 denies them.

5 95. Mr. Sidley lacks knowledge or information sufficient to form a belief
6 as to the truth of the allegations of paragraph 95 of the Complaint, and on that basis
7 denies them.

8 96. Mr. Sidley lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations of paragraph 96 of the Complaint, and on that basis
10 denies them.

11 97. Mr. Sidley lacks knowledge or information sufficient to form a belief
12 as to the truth of the allegations of paragraph 97 of the Complaint, and on that basis
13 denies them.

14 98. Mr. Sidley lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations of paragraph 98 of the Complaint, and on that basis
16 denies them.

17 99. Mr. Sidley lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations of paragraph 99 of the Complaint, and on that basis
19 denies them.

20 100. Mr. Sidley lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations of paragraph 100 of the Complaint, and on that
22 basis denies them.

23 101. Mr. Sidley lacks knowledge or information sufficient to form a belief
24 as to the truth of the allegations of paragraph 101 of the Complaint, and on that
25 basis denies them.

26 102. Mr. Sidley lacks knowledge or information sufficient to form a belief
27 as to the truth of the allegations of paragraph 102 of the Complaint, and on that
28 basis denies them.

1 103. Mr. Sidley lacks knowledge or information sufficient to form a belief
2 as to the truth of the allegations of paragraph 103 of the Complaint, and on that
3 basis denies them.

4 104. Mr. Sidley lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations of paragraph 104 of the Complaint, and on that
6 basis denies them.

7 105. Mr. Sidley lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations of paragraph 105 of the Complaint, and on that
9 basis denies them.

10 106. Mr. Sidley lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations of paragraph 106 of the Complaint, and on that
12 basis denies them.

13 107. Mr. Sidley lacks knowledge or information sufficient to form a belief
14 as to the truth of the allegations of paragraph 107 of the Complaint, and on that
15 basis denies them.

16 108. Mr. Sidley lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations of paragraph 108 of the Complaint, and on that
18 basis denies them.

19 109. Mr. Sidley lacks knowledge or information sufficient to form a belief
20 as to the truth of the allegations of paragraph 109 of the Complaint, and on that
21 basis denies them.

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach of Fiduciary Duties — Against All Defendants, Except Swedberg)**

24 110. Mr. Sidley incorporates by reference his responses to paragraphs 1
25 through 80 of the Complaint as though set forth in full.

26 111. Paragraph 111 contains legal conclusions, to which no response is
27 required. To the extent the allegations require a response, they are denied.

28 112. Paragraph 112 contains legal conclusions, to which no response is

1 required. To the extent the allegations require a response, they are denied.

2 113. Paragraph 113 contains legal conclusions, to which no response is
3 required. To the extent the allegations require a response, they are denied.

4 114. Paragraph 114 contains legal conclusions, to which no response is
5 required. To the extent the allegations require a response and to the extent the
6 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
7 the extent a further response is required, Mr. Sidley lacks knowledge or information
8 sufficient to form a belief as to the truth of those allegations, and on that basis
9 denies them.

10 115. Mr. Sidley lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations of paragraph 115 of the Complaint, and on that
12 basis denies them.

13 116. Paragraph 116 contains legal conclusions, to which no response is
14 required. To the extent the allegations require a response and to the extent the
15 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
16 the extent a further response is required, Mr. Sidley lacks knowledge or information
17 sufficient to form a belief as to the truth of those allegations, and on that basis
18 denies them.

19 117. Paragraph 117 contains legal conclusions, to which no response is
20 required. To the extent the allegations require a response and to the extent the
21 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
22 the extent a further response is required, Mr. Sidley lacks knowledge or information
23 sufficient to form a belief as to the truth of those allegations, and on that basis
24 denies them.

25 **SECOND CLAIM FOR RELIEF**

26 **(Gross Negligence — Against All Defendants, Except Swedberg)**

27 118. Mr. Sidley incorporates by reference his responses to paragraphs 111
28 through 117 of the Complaint as though set forth in full.

1 119. Paragraph 119 contains legal conclusions, to which no response is
2 required. To the extent the allegations require a response, they are denied.

3 120. Paragraph 120 contains legal conclusions, to which no response is
4 required. To the extent the allegations require a response and to the extent the
5 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
6 the extent a further response is required, Mr. Sidley lacks knowledge or information
7 sufficient to form a belief as to the truth of those allegations, and on that basis
8 denies them.

9 121. Paragraph 121 contains legal conclusions, to which no response is
10 required. To the extent the allegations require a response and to the extent the
11 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
12 the extent a further response is required, Mr. Sidley lacks knowledge or information
13 sufficient to form a belief as to the truth of those allegations, and on that basis
14 denies them.

15 122. Paragraph 122 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response and to the extent the
17 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
18 the extent a further response is required, Mr. Sidley lacks knowledge or information
19 sufficient to form a belief as to the truth of those allegations, and on that basis
20 denies them.

21 123. Paragraph 123 contains legal conclusions, to which no response is
22 required. To the extent the allegations require a response and to the extent the
23 allegations are directed towards Mr. Sidley, Mr. Sidley denies those allegations. To
24 the extent a further response is required, Mr. Sidley lacks knowledge or information
25 sufficient to form a belief as to the truth of those allegations, and on that basis
26 denies them.

THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Duty — Against Siravo and Swedberg)

124. Mr. Sidley incorporates by reference his responses to paragraphs 1 through 23 and 81 through 105 of the Complaint as though set forth in full.

125. Paragraph 125 contains legal conclusions, to which no response is required. To the extent the allegations require a response, Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and on that basis denies them.

126. Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 126 of the Complaint, and on that basis denies them.

127. Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 127 of the Complaint, and on that basis denies them.

128. Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 128 of the Complaint, and on that basis denies them.

129. Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 129 of the Complaint, and on that basis denies them.

FOURTH CLAIM FOR RELIEF

(Fraud — Against Siravo and Swedberg)

130. Mr. Sidley incorporates by reference his responses to paragraphs 1 through 23, 81 through 105, and 125 through 129 of the Complaint as though set forth in full.

131. Paragraph 131 contains legal conclusions, to which no response is required. To the extent the allegations require a response, Mr. Sidley lacks knowledge or information sufficient to form a belief as to the truth of those

1 allegations, and on that basis denies them.

2 132. Mr. Sidley lacks knowledge or information sufficient to form a belief
3 as to the truth of the allegations of paragraph 132 of the Complaint, and on that
4 basis denies them.

5 133. Mr. Sidley lacks knowledge or information sufficient to form a belief
6 as to the truth of the allegations of paragraph 133 of the Complaint, and on that
7 basis denies them.

8 134. Mr. Sidley lacks knowledge or information sufficient to form a belief
9 as to the truth of the allegations of paragraph 134 of the Complaint, and on that
10 basis denies them.

11 135. Mr. Sidley lacks knowledge or information sufficient to form a belief
12 as to the truth of the allegations of paragraph 135 of the Complaint, and on that
13 basis denies them.

14 136. Mr. Sidley lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations of paragraph 136 of the Complaint, and on that
16 basis denies them.

17 137. Mr. Sidley lacks knowledge or information sufficient to form a belief
18 as to the truth of the allegations of paragraph 137 of the Complaint, and on that
19 basis denies them.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Breach of Fiduciary Duty — Against Siravo)**

22 138. Mr. Sidley incorporates by reference his responses to paragraphs 1
23 through 23 and 81 through 109 of the Complaint as though set forth in full.

24 139. Paragraph 139 contains legal conclusions, to which no response is
25 required. To the extent the allegations require a response, Mr. Sidley lacks
26 knowledge or information sufficient to form a belief as to the truth of those
27 allegations, and on that basis denies them.

28 140. Paragraph 140 contains legal conclusions, to which no response is

1 required. To the extent the allegations require a response, Mr. Sidley lacks
2 knowledge or information sufficient to form a belief as to the truth of those
3 allegations, and on that basis denies them.

4 141. Mr. Sidley lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations of paragraph 141 of the Complaint, and on that
6 basis denies them.

7 142. Mr. Sidley lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations of paragraph 142 of the Complaint, and on that
9 basis denies them.

10 **SIXTH CLAIM FOR RELIEF**

11 **(Unjust Enrichment — Against Lane)**

12 143. Mr. Sidley incorporates by reference his responses to paragraphs 1
13 through 23, 81 through 109, and 139 through 142 of the Complaint as though set
14 forth in full.

15 144. Paragraph 144 contains legal conclusions, to which no response is
16 required. To the extent the allegations require a response, Mr. Sidley lacks
17 knowledge or information sufficient to form a belief as to the truth of those
18 allegations, and on that basis denies them.

19 145. Mr. Sidley lacks knowledge or information sufficient to form a belief
20 as to the truth of the allegations of paragraph 145 of the Complaint, and on that
21 basis denies them.

22 146. Mr. Sidley lacks knowledge or information sufficient to form a belief
23 as to the truth of the allegations of paragraph 146 of the Complaint, and on that
24 basis denies them.

25 147. Mr. Sidley lacks knowledge or information sufficient to form a belief
26 as to the truth of the allegations of paragraph 147 of the Complaint, and on that
27 basis denies them.
28

DEFENSES

As and for his defenses, Mr. Sidley alleges as follows and reserves the right to assert additional defenses in the event that discovery indicates they would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(Standing)

The Complaint, and each and every cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because plaintiff lacks standing to assert the claims alleged in this action.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint, and each cause of action alleged therein against Mr. Sidley, fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

(No Duty)

The Complaint, and each cause of action alleged therein against Mr. Sidley, fails to state a legally cognizable duty owed to plaintiff by Mr. Sidley.

FOURTH AFFIRMATIVE DEFENSE

(Loyalty, Prudent Person, Candor, Good Faith)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because at all times Mr. Sidley acted prudently, honestly, in good faith, with full candor, and in the best interest of WesCorp.

FIFTH AFFIRMATIVE DEFENSE

(Due Diligence and Reasonable Investigation)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because each and every act and omission by Mr. Sidley was made after reasonable investigation, and Mr. Sidley had reasonable grounds to believe, and did believe, that such acts or omissions were prudent given

1 the circumstances.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 (Business Judgment Rule)

4 The Complaint, and each cause of action alleged therein against Mr. Sidley,
5 is barred, in whole or in part, because at all times Mr. Sidley's acts and omissions
6 were made on an informed basis, in good faith, in the honest belief that such acts
7 and omissions were in the best interest of WesCorp, and the product of reasonable
8 business judgment.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 (No Gross Negligence)

11 The Complaint, and each cause of action alleged therein against Mr. Sidley,
12 is barred, in whole or in part, because at all times Mr. Sidley's acts and omissions
13 were made in good faith, honestly, and reasonably prudent given the circumstances.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 (Reliance on Others)

16 The Complaint, and each cause of action alleged therein against Mr. Sidley,
17 is barred, in whole or in part, because every act or omission by Mr. Sidley alleged
18 in the Complaint, if it occurred at all, was made or occurred in reasonable good
19 faith reliance on the statements and representations of others upon which Mr. Sidley
20 was entitled to rely.

21 **NINTH AFFIRMATIVE DEFENSE**

22 (Reliance on Professionals)

23 The Complaint, and each cause of action alleged therein against Mr. Sidley,
24 is barred, in whole or in part, because Mr. Sidley relied in good faith upon the
25 professional judgments of WesCorp's professionals, as well as its inside and
26 outside auditors, investment bankers and ratings agencies and counsel at the time of
27 the alleged acts concerning matters which he reasonably believed to be within such
28 persons' professional or expert competence.

TENTH AFFIRMATIVE DEFENSE

(Conduct of Others)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, to the extent plaintiff purports to hold Mr. Sidley responsible for alleged breaches of fiduciary duties, negligence, or conduct engaged in, by third parties or other defendants.

ELEVENTH AFFIRMATIVE DEFENSE

(Indemnification, Contribution and Proportionate Liability)

Without in any way admitting that plaintiff has suffered any loss as alleged in the Complaint, to the extent any loss has been sustained, Mr. Sidley is entitled to indemnification and/or contribution from others, named or unnamed in this action, relating to such alleged losses, including but not limited to indemnification from co-defendants who caused or contributed to damages allegedly incurred and from plaintiff pursuant to the California Labor Code or other applicable laws.

TWELFTH AFFIRMATIVE DEFENSE

(Apportionment)

Without admitting that plaintiff suffered damages in any amount, or that Mr. Sidley or any defendant is or should be liable for any such damages, Mr. Sidley asserts that his liability and the liability of any other responsible persons, named or unnamed, should be apportioned according to their relative degrees of fault, and any alleged liability of Mr. Sidley should be reduced accordingly.

THIRTEENTH AFFIRMATIVE DEFENSE

(Lack of Injury to Plaintiff)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because plaintiff has not suffered any legally cognizable injury or damage.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Causation)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because Mr. Sidley did not directly or indirectly cause the alleged damages complained of in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(Intervening or Superseding Cause)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because plaintiff's alleged damages, if any, were the result of one or more intervening or superseding causes or caused by the acts and/or failures to act of persons and/or entities other than Mr. Sidley, and were not the result of any act or omission on the part of Mr. Sidley.

SIXTEENTH AFFIRMATIVE DEFENSE

(Macroeconomic Factors)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because plaintiff's injuries or damages, to the extent they exist, were caused by supervening events unconnected to Mr. Sidley, including macroeconomic and mortgage industry events that constrained WesCorp's access to the credit and capital markets and affected its liquidity.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Laches)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, by the doctrine of laches.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, by the doctrine of waiver.

NINETEENTH AFFIRMATIVE DEFENSE

(Estoppel)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because by the doctrine of estoppel because, by its words, actions and failures to act, plaintiff is equitably estopped from asserting each of the purported causes of action alleged in the Complaint and/or from obtaining any of the relief sought thereby.

TWENTIETH AFFIRMATIVE DEFENSE

(*In Pari Delicto*, Unclean Hands)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, by the doctrines of *in pari delicto* and/or unclean hands.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Consent, Approval, Acquiescence, Participation, Ratification)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because of plaintiff's own consent, approval, acquiescence, participation and/or ratification at any time in any activity that plaintiff challenges as improper. In addition, the claims against Mr. Sidley are barred because the acts stated were ratified or approved by the National Credit Union Administration Board and/or other state and federal agencies or entities.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Complaint, and each cause of action alleged therein against Mr. Sidley, is barred, in whole or in part, because of the applicable statute(s) of limitations and/or period(s) of repose.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Unjust Enrichment)

The Complaint, and each cause of action alleged therein against Mr. Sidley,

1 is barred, in whole or in part, because plaintiff would be unjustly enriched if it were
2 allowed to recover in this action. Furthermore, without admitting that plaintiff has
3 suffered any loss as a result of an act or omission alleged in the Complaint, any
4 damages awarded in connection with the claims asserted in this action are offset
5 and/or must be reduced by the amount of the tax benefit accruing to plaintiff, by
6 virtue of its deduction of capital loss, in order to prevent unjust enrichment of those
7 individuals.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 (No Entitlement to Compensatory Damages)

10 Plaintiff is not entitled to recover the compensatory damages requested in the
11 Complaint.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 (No Entitlement to Exemplary or Punitive Damages)

14 Plaintiff is precluded from recovering exemplary or punitive damages, either
15 in whole or in part, from Mr. Sidley under the applicable provisions of the law,
16 including, without limitation, California Civil Code section 3294, the United States
17 Constitution and/or the California Constitution.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 (No Entitlement to Costs of Litigation)

20 Plaintiff is not entitled to recover their costs and expenses incurred in this
21 action, including without limitation, attorneys' fees, from Mr. Sidley.

22
23 DATED: November 1, 2010

Edwin V. Woodsome, Jr.
Andrew S. Wong
Seth E. Freilich
ORRICK, HERRINGTON & SUTCLIFFE LLP

24
25
26 By: /s/ Seth E. Freilich
27 SETH E. FREILICH

28 Attorneys For Defendant
TIMOTHY T. SIDLEY

JURY DEMAND

Mr. Sidley hereby demands a trial by jury on all issues so triable.

DATED: November 1, 2010

Edwin V. Woodsome, Jr.
Andrew S. Wong
Seth E. Freilich
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Seth E. Freilich
SETH E. FREILICH

Attorneys For Defendant
TIMOTHY T. SIDLEY